

(1989) 03 MP CK 0049
In the Madhya Pradesh High Court
Case No : M.P. No. 1348 of 1988

Babpu Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 09-03-1989

Acts Referred:

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 59, 7

Citation : (1989) MPLJ 322

Hon'ble Judges : S.K. Dubey, J; A.G. Qureshi, J

Bench : Division Bench

Advocate : R.G. Waghmare, for the Appellant; S.S. Samvatsar, G.A. and A.K. Chitale, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

The petitioner, who is the Chairman of Krishi Upaj Mandi Samiti, Indore, has filed this petition under Articles 226 and 227 of the Constitution of India for quashing of order No. 1788 dated 18-11-1988 (Annexure N.), whereby the respondent No. 2 on a complaint made by ten members of the Samiti and after giving the petitioner an opportunity of hearing, passed an order u/s 59 of the M. P. Krishi Upaj Mandi Adhiniyam, 1973 (for short the Adhiniyam and directed that the meeting of the committee be held for consideration of the no-confidence motion moved against the petitioner by the ten Members of the Samiti.

Material facts leading to this petition are that the Krishi Upaj Mandi Samiti is a constituted body and has been established u/s 7 of the Adhiniyam. The Samiti i.e. the Market Committee consists of in all twenty members. A motion of no-confidence was moved by ten members, vide application dated 29th September 1988 (Annexure AI) filed by the interveners, addressed to the Collector, Indore and the Director, Krishi Upaj Mandi. On this the Secretary of the Samiti issued a notice to all the members for holding a meeting of the Market Committee for

considering the motion. The notice (Annexure A) was issued according to Section 14(2)(ii) of the Act. Date, time and place were notified in the notice. On the date, time and place so notified, the Sub-Divisional Officer, who was appointed by the Collector to preside over the meeting held the meeting. The Chairman of the meeting passed an order on the date of the meeting i.e. 2-11-1988 (Annexure B) that out of twenty members only six members were present, though the meeting was to start from 12 noon, but in awaiting for the members it started at 12.15 p.m. as only six members attended the specially convened meeting for the purpose, the motion of no-confidence was not carried out and it fell automatically. The proceedings of the specially convened meeting were closed at 12.20 p.m. It is pertinent to note that six members out of the members who were pursuing the no-confidence motion right from the beginning till the meeting was called, were not present in order to exhibit their firm stand in support of the no-confidence motion. Nine members at 1.20 p.m. gave an application to the Chairman addressed to the Collector, Indore which has been annexed as Annexure A2 by the interveners wherein the members made allegations against the Chairman Gangrade that on the date, time and place fixed the members reached to take part in the meeting specially convened for the purpose of carrying out the no-confidence motion, but the Chairman asked the members to wait outside and told them that they will be called later. The members were waiting outside, but they were not called and later on they came to know that the meeting has been abruptly closed. Before the application was given to the Chairman Gangrade, there was heated discussion between these members and the Chairman and ultimately the Chairman entertained the application and put therein the date and time of the receipt of the application, but without endorsing any note on it. The allegations of collusion between the Chairman and the petitioner and the members of his party were made. The Collector considered that he had no jurisdiction to consider the grievance of these members, forwarded this application to the Director of Krishi Upaj Mandi, the respondent No. 2, who after considering the application issued a notice to show cause to the petitioner (Annexure C).

The petitioner and his party members filed the reply. In the reply (Annexure D) no objection in relation to the jurisdiction of the Director for exercising the powers u/s 59 was raised. The Director perused the proceedings and the record of the Mandi Samiti and heard the petitioner and other Members in all twelve, who were present at the time of hearing. After hearing and examination of the proceedings, the Director was satisfied that the proceedings of specially convened meeting for the purpose of considering the motion are not regular. It was also held that according to Section 14(1) of the Adhiniyam for considering the no-confidence motion in a meeting specially convened no voting was done in the meeting and it is the Chairman, the Presiding Officer, who was appointed by the Collector, took decision himself holding that as required of members was not present, hence the motion automatically failed. The motion was not at all considered or was disposed of. The procedure adopted by the Chairman was not

warranted and was not in accordance with the provisions of Section 14(1) of the Adhiniyam. Hence the Director, directed to convene a fresh meeting for considering the motion. The Director passed this order on 18th November, 1988 which has been annexed as Annexure E with the petition. It is this order which is under challenge.

Shri R. G. Waghmare, learned counsel for the petitioner raised four important contentions. One, that the sub-section (3) of Section 14 of the Adhiniyam has been added by the M. P. Krishi Upaj Mandi (Sanshodhan) Adhiniyam, 1986 (No. 24 of 1986) whereby a motion-of no confidence cannot be taken up for reconsideration against the Chairman or Vice-Chairman within six months from the date of disposal of the earlier no-confidence motion. The second contention raised by the learned counsel for the petitioner is that the Director had no jurisdiction u/s 59, as that section applies to the proceedings of the Market Committee and not the proceedings of the Chairman of the specially convened meeting for the purpose of considering the no-confidence motion. Section 14 is itself a self-contained Code and there is no remedy available to any of the party to approach the Director u/s 59. In any case Chapter III deals with the Constitution of Market Committees right from Section 7 to Section 14 which is an independent provision. Chapter X deals with the affairs of the Market Committee. Sections 54, 55, 56, 57 and 58 are the sections in relation to the members, the Chairman and Vice-Chairman of the Market Committee and the powers u/s 59 can be exercised only if any action is taken under this Chapter.

Thirdly, Shri Waghmare contended that six out of the ten members who moved the motion of no-confidence were present in the meeting, but no complaint was made by them at the time of the meeting. Therefore, later on they cannot be allowed to say that the members were not allowed to take part in the meeting so convened. Learned counsel lastly contended that as the Chairman of the meeting was not vested with the power for adjournment of the meeting for want of quorum, rightly ordered that motion of no-confidence, because of the absence of the required members in the meeting, automatically fell. In support of his contentions Shri Waghmare, learned counsel for the petitioner placed reliance on a recent decision of the Apex Court in Chandrakant Khaire Vs. Dr Shantaram Kale and Others, and four Division Bench decisions of this Court in 1966 MPLJ 901 : 1966 J LJ 735, Babulal Jain vs. State of M. P. and others; 1964 MPLJ 197 , Vasant Rao Krishna Rao Kinhekar Vs. Gram Panchayat, Lanji and Others, , Vasant Rao vs. Gram Panchayat, Lanji and others and a Single Bench decision of the Rajasthan High Court in Suratram Vs. The Addl. District Development Officer, Ajmer and Others, .

Shri D. D. Vyas, Government Advocate supported the order of the Director.

Though the Chairman of the meeting Gangrade was made a party to the petition, but neither he appeared after service of notice nor filed any affidavit reply or return.

Shri A. K. Chitale, learned counsel for the ten members, who moved the motion of no-confidence applied for intervention and this Court granted permission, vide order dated 12th April 1988. The interveners filed a detailed affidavit of one Ramashankar s/o Radulare one of the members of the Committee who moved the motion of no-confidence against the Chairman of the Committee. In reply to this affidavit Gangrade the Chairman did not file any reply though the petitioner filed the reply dated 12-12-1988 but no averment or specific denial supported by an affidavit was made to controvert that members were not present on the date, time and place of the meeting nor Shri Gangrade asked these members to wait outside.

Shri Chitale contended that it is a glaring instance where the Chairman who was appointed to hold the meeting joined hands with the petitioner, who is the Chairman of the Market Committee and against whom a motion of no-confidence was moved. The tradition of the democracy requires that when a person who wants to hold the elected office of a legal body must give due respect to the wishes of the majority of the members of the body. But the petitioner instead of facing the motion of no-confidence, won over the Presiding Officer i.e. the Chairman who wrote that because of the absence of the requisite number of Members the motion of no-confidence automatically fell. Therefore, it is not a case where u/s 14(3) of the Adhinyam the motion of no-confidence cannot be reconsidered within a period of six months from the date of disposal of the earlier no-confidence motion. Learned counsel placed stress on the word "re-consideration" and "disposal" and placed reliance on Black's Law Dictionary, 5th Edition, page 423 and Legal Glossary published by the Government of India for the meaning of the word "disposed of". Learned counsel also contended that as no question of jurisdiction was raised before the Director, now under Articles 226 and 227 of the Constitution of India, the petitioner is estopped to challenge the jurisdiction of, the Director.

Learned counsel further submits that Section 59 is a general provision and the power is given to the Director to see the legality, propriety and regularity of any proceeding of the Market Committee. Moreover, if the petitioner was aggrieved of the order, which was passed after affording an opportunity of hearing to the petitioner, the petitioner ought to have approached the State Government against the said order as provided u/s 59 itself. The remedy having been not availed, the petitioner cannot challenge the order. Lastly learned counsel contended that as the ten members made a complaint against the Chairman of the specially convened meeting, and on a complaint after notice to the petitioner the Director passed the order, the ten members having not made parties to the petition, the petition is incompetent and deserves to be dismissed on this ground also.

After hearing the learned counsel for the parties and carefully perusing the record we are of the opinion that this petition has no merit and deserves to be dismissed. First of all we will deal with the contention of Shri Waghmare, learned

counsel for the petitioner in relation to the reconsideration of the no-confidence motion. Section 14 of the Adhiniyam as amended reads as under:

14. No-confidence motion against Chairman or Vice-Chairman -- (1) A motion of no-confidence may be moved against the Chairman or the Vice-Chairman at a meeting specially convened FOR THE purpose under subsection (2) and if the motion is carried by majority of not less than 2/3 of the members present and voting of such majority is more than one half of the total number of members constituting the market committee for the time being the Chairman or Vice-Chairman, as the case may be, against whom such motion is passed, shall cease to hold office with effect from the date immediately next after the date on which such motion is passed.

(2) For the purpose of sub-section (1), a meeting of the market committee shall be held in the following manner, namely:

(i) the meeting shall be convened by the secretary of the market committee on a notice signed by not less than 1/3 of the total number of members constituting the market committee for the time being, within thirty days from the date of the receipt of the notice of motion of no-confidence;

(ii) the notice of such a meeting shall specify the time and place thereof and shall be despatched by the secretary of the market committee to every member at least ten clear days in advance of the date of meeting. A copy of the notice shall also be sent to the Director and Collector;

(iii) the Chairman or Vice-Chairman shall not preside over the meeting, but such meeting shall be presided over by an officer of the Government as the Collector may appoint for the purpose. However, the Chairman or Vice-Chairman as the case may be shall have a right to speak and otherwise to take part in the proceeding of the meeting.

(3) No motion of no-confidence shall be taken up for reconsideration against such person holding the post of Chairman or Vice-Chairman within six months from the date of disposal of the earlier no-confidence motion.

The object of adding sub-section 3 is to restrict reconsideration of second no-confidence motion against the Chairman or Vice-Chairman of the Market Committee within six months from the date of disposal of the earlier no-confidence motion so that the office bearer may function properly, in the interest of the Market Committee. Six months' time provides sufficient time for such a person to settle down for concrete work and to justify the confidence reposed by the electorate.

The important question for our consideration is whether in the given set of circumstances the motion of no-confidence fixed for consideration on 2-11-1988 at 12 noon in the specially convened meeting, was considered and disposed of. It is surprising that the members who moved for the motion of no-confidence and at their instance the meeting was specially convened and after notice, they will

not attend the meeting? There is not the slightest doubt that these members at the instance of the Chairman of the meeting were kept outside. When they came to know that the meeting has been adjourned and they were not allowed to take part in the proceedings of the meeting, there were heated discussions and then immediately an application addressed to the Collector was given to the Chairman. Though he entertained the application, noted the date and time over it of receiving the application, but did not dare to refute the allegations made in the application immediately nor before the Collector or the Director he gave his report, nor even before this Court, though he has been made a party to the petition. What to say of Chairman, even the petitioner has not come forward to refute the allegations made in the petition nor filed any counter affidavit in reply to the affidavit by Ramdulare, one of the interveners. In such circumstances when more than one half of the total number of members constituting the Market Committee were not present and the motion of no-confidence was not placed for consideration and was not disposed of, and the Chairman wrote for himself that the motion of no-confidence automatically failed, it cannot be said that the motion of no-confidence for carrying it out or not, was considered.

The word "reconsideration" in sub-section clause (3) has a material meaning i.e. when once the no-confidence motion is placed before the House and after it is thought over by the members and thereafter it is disposed of then it can be said that it cannot be reconsidered as it was disposed of. From the order of the Chairman of the specially convened meeting it is evident that it was not considered at all by the members of the House. Section 14(2)(iii) is also relevant for the purposes of consideration when the motion of no-confidence is placed before the House, which speaks that the Chairman or Vice-Chairman, as the case may be, shall have a right to speak and otherwise to take part in the proceedings of the meeting.

In the present case, as the motion of no-confidence was not placed for disposal before the House it cannot be said that the no-confidence motion moved was finally disposed of and cannot be placed for reconsideration against the petitioner. The prohibition under sub-section (3) of Section 14 of the Adhinyam is reconsideration of no-confidence motion within six months from the date of disposal of the earlier no-confidence motion. Besides the word "consideration" and word "disposal" are also very relevant which denote to deal with the motion definitely. This having not been done, the bar of sub-section (3) of Section 14 does not come into play.

The other contention of the learned counsel for the petitioner is that as there is no provision for adjournment of the meeting for want of quorum in the section or in the Chapter, the Chairman was right in holding that as the requisite number of Members is not present the motion of no-confidence automatically fell. On facts, we need not deal with this contention as we are satisfied on the record that though the members were present they were not allowed to take part in the proceeding by the Chairman himself. Therefore, the question of adjournment of

the meeting and whether there is power of adjournment or not, does not arise. There was an abuse of power by the Chairman in closing the proceedings of such a meeting.

We also do not feel it proper to examine, in the facts of the case, whether the Director u/s 59 was having power to call for the proceeding of the meeting. Suffice it to say that the petitioner himself took part in the proceeding before the Director, but did not raise any objection in relation to jurisdiction. See (sic) Pannalal Binjraj Vs. Union of India (UOI), . After the order of the Director the petitioner did not approach the State Government, but straightway came to this Court. This Court under Article 226 of the Constitution of India even if it finds that the Director was having no jurisdiction to entertain the complaint or examine the regularity or propriety of the proceeding, will not interfere in its extraordinary jurisdiction under Article 226 for quashing the order of the Director and a writ of certiorari will not be issued because we are satisfied that there is no failure of justice in the case. If the order of the Director is quashed in that case this Court would perpetrate an illegal and unauthorised action or order of the Chairman passed in favour of the petitioner holding that the motion of no-confidence automatically fell. In fact the action of the Chairman cannot be sustained in the eyes of law and this Court would not be a party to an illegal action, by quashing the order of the Director so that to assist the petitioner in achieving the ulterior object i.e. not facing the motion of no-confidence before the House.

A Division Bench of this Court in Punjab Sikh Regular Motor Service, Bilaspur Vs. Union of India (UOI) and Others, while considering the case under Article 226, placing reliance upon a decision of the Apex Court in A.M. Allison Vs. B.L. Sen, has held that--

It is also settled law that if the effect of quashing an order would be to restore an order which is void, it would not be appropriate to exercise jurisdiction under Article 226 of the Constitution. The effect of quashing the order of the State Transport Appellate Tribunal in the instant case would be to perpetrate a void grant in favour of the petitioner. It cannot be said that any failure of justice would occur in the eyes of law if the petitioner does not succeed in achieving the benefit of a grant which is void in law. Certainly, this Court would not be justified under Article 226 of the Constitution to assist the petitioner in achieving such a benefit.

By the order of the Director no injustice has been caused to the petitioner. The petitioner has got an opportunity to face the motion of no-confidence and he has got an opportunity of audience. If he succeeds it is well and good and if the motion of no-confidence is carried out, then democratic process requires that a person having lost confidence of the elected body be not allowed to function as its President or Chairman. Allowing such a person to occupy the post on technical grounds for six months even would be contrary to the well established notions of democracy. The traditions of democracy require that a person who wants to hold

an elected office of a Local Body, must give due respect to the wishes of the majority of the members of that body and if he has lost the confidence of that majority then he should not try to stay in that office even for a moment and should not come forward to seek the protection of this Court under its extraordinary jurisdiction conferred by Article 226 of the Constitution of India on technical grounds and this Court should not be made a party to such an incereceremonious and undemocratic act either of the petitioner or of the Chairman of the meeting who observed an empty formality of holding a specially convened meeting. The interference is also not warranted because in future in such cases the Chairman who is an officer of the Government may not act in an undemocratic or incereceremonious manner or the recurrence may not occur.

In the result the petition has no merit and is dismissed with no order as to costs.